

STATE OF MICHIGAN  
COURT OF APPEALS

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ELEANORE JACOB and JOHN JACOB,

Plaintiffs-Appellants,

v

CONTINENTAL LANES, INC.,

Defendant-Appellee.

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UNPUBLISHED

March 4, 2004

No. 244506

Macomb Circuit Court

LC No. 00-004227-NO

Before: Schuette, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Plaintiff Eleanore Jacob, an invitee on defendant's premises, sustained injuries when she collided with Patricia Ujenski, defendant's employee, in an aisle. Plaintiffs filed suit alleging that defendant was liable under a theory of respondeat superior for Ujenski's negligent conduct in moving into the aisle from behind a counter. The trial court granted defendant's motion for summary disposition, concluding that defendant owed no duty to Eleanore Jacob because the danger of two persons colliding in an aisle was open and obvious.

II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

III. ANALYSIS

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. A possessor of land may be held liable for injuries resulting from negligent maintenance of the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id.*, 612. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993).

Contrary to plaintiffs' assertion, this is a premises liability case. While the "condition" at issue, Ujenski's act of walking from behind the counter and into the aisle, was not a physical characteristic of the premises, it was an activity that took place on the premises. A landowner is not an absolute insurer of the safety of an invitee. A reasonably prudent person will watch where he or she is going and will take appropriate care for his or her own safety. *Bertrand*, 449 Mich at 614, 616. Eleanore Jacob acknowledged that as she was walking past the counter she saw Ujenski momentarily, but did not think that Ujenski was close enough to collide with her until the collision actually occurred. Eleanore Jacob admitted that the aisle was wide and provided sufficient space for persons to walk. The fact that Eleanore Jacob claimed she did not see Ujenski until just before the collision occurred is irrelevant. *Novotney, supra*, 477. It is reasonable to conclude that Eleanore Jacob would not have been injured had she been watching the area in which she was walking more carefully, or had she simply paused when she saw Ujenski moving from behind the counter. *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999). The trial court did not err in concluding that the activity on defendant's premises was open and obvious.

No special aspects made the activity unreasonably dangerous in spite of its open and obvious nature. *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001). Had Eleanore Jacob simply watched her step, any risk of harm would have been obviated. *Spagnuolo v Rudds #2*, 221 Mich App 358, 360; 561 NW2d 500 (1997). Summary disposition was proper.

Affirmed.

/s/ Bill Schuette  
/s/ Patrick M. Meter  
/s/ Donald S. Owens